IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1208 of 1996

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYESHKUMAR AMBALAL MAKWANA

Versus

COLLECTOR

Appearance:

MR NS SHETH for Petitioner No. 1

MR KL PANDYA, AGP, for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 01/04/2004

ORAL JUDGEMENT

1. The petitioner has challenged the order of the State Government in Revision Application No.100/94 dated 17th January 1996 at Annexure-G to the petition. The case of the petitioner is that the order of the revisional authority was passed without notice to the petitioner. Mr. Sheth pointed out ground (C) in the

petition which reads as under:

"The petitioner respectfully states that he was never intimated about the date of hearing of its Revision Application by the respondent no.2 or by his office. The petitioner respectfully submits that on page 5 of the order passed by the respondent no.2, Statement of Facts has been made to the effect that the petitioner was served with the notice showing date of hearing by registered post AD. The petitioner denied receipt of any notice at all showing date of hearing either by simple post or by registered post AD. Therefore, the said statement made in the impugned order runs completely contrary to the record of the case. The petitioner was really surprised when he received impugned order dated 17.1.1996 by registered post and read it. However, having received the petitioner went to inquire to the office of the respondent no.2. The petitioner could not find any registered AD slip showing the signature of the petitioner of having received impugned order. Actually there was no proof to show that the notice of hearing of the revision was sent by R.P.A.D. Thereupon, the petitioner complained to the respondent no.2. The respondent no.2 also found substance in the complaint of the petitioner. However, he could not help the petitioner as he was "functus officio". Therefore the petitioner is required to file the present petition for the purpose of getting the impugned order quashed and set aside."

2. The above fact is not denied by the respondent. Therefore it is clear that the impugned order was passed without hearing the petitioner and on this ground alone the impugned order requires to be quashed and set aside and the matter is required to be remanded.

3. Accordingly the impugned order dated 17.1.1996 is quashed and set aside and the matter is remanded to respondent no.2 for hearing it afresh on merits. The petitioner shall approach the respondent no.2 within two weeks from today. The interim protection granted to the petitioner in this petition shall continue till the disposal of the stay application by the respondent no.2. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S.JHAVERI, J.]

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